

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 859**

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**Introduced by Assembly Member Plescia**

February 22, 2007

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An act to amend Sections ~~488.080~~, *512.030*, 699.080, and 1011 of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 859, as amended, Plescia. Civil procedure: service of process.

(1) Existing law requires certain documents to be filed with a levying officer under a writ of attachment or execution within 5 days of the levy, including an affidavit of the registered process server stating the manner of levy performed and proof of service of the copy of the writ and notice of attachment or levy on other persons.

This bill instead would require that filing within 5 court days of the levy. The bill also would delete the separate requirement that an affidavit as to the manner of levy performed be filed with the levying officer.

*(2) Existing law requires that prior to a hearing on a writ of possession, the defendant be served with a copy of the summons and complaint, a notice of application and hearing, and a copy of the application and any affidavit in support thereof.*

*This bill would require service in the same manner as a summons, as specified, if the defendant has not appeared in the action and further writs, notices, orders, or other papers are required to be served on the defendant.*

~~(2)~~

(3) Existing law authorizes personal service upon a party in a civil action, if no specific provision is made, by leaving the notice or other

papers at the party's residence, between the hours of 8 a.m. and 6 p.m. with a person of not less than 18 years of age.

This bill instead would authorize that service between the hours of 7 a.m. and 9 p.m. The bill would make other technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 488.080 of the Code of Civil Procedure  
2     is amended to read:  
3     488.080. (a) A registered process server may levy under a writ  
4     of attachment on the following types of property:  
5     (1) Real property, pursuant to Section 488.315.  
6     (2) Growing crops, timber to be cut, or minerals or the like  
7     (including oil and gas) to be extracted or accounts receivable  
8     resulting from the sale thereof at the wellhead or minehead,  
9     pursuant to Section 488.325.  
10    (3) Personal property in the custody of a levying officer,  
11    pursuant to Section 488.355.  
12    (4) Equipment of a going business, pursuant to Section 488.375.  
13    (5) Motor vehicles, vessels, mobilehomes, or commercial  
14    coaches used as equipment of a going business, pursuant to Section  
15    488.385.  
16    (6) Farm products or inventory of a going business, pursuant to  
17    Section 488.405.  
18    (7) Personal property used as a dwelling, pursuant to subdivision  
19    (a) of Section 700.080.  
20    (8) Deposit accounts, pursuant to Section 488.455.  
21    (9) Property in a safe-deposit box, pursuant to Section 488.460.  
22    (10) Accounts receivable or general intangibles, pursuant to  
23    Section 488.470.  
24    (11) Final money judgments, pursuant to Section 488.480.  
25    (12) Interest of a defendant in personal property in the estate of  
26    a decedent, pursuant to Section 488.485.  
27    (b) Before levying under the writ of attachment, the registered  
28    process server shall deposit a copy of the writ with the levying  
29    officer and pay the fee provided by Section 26721 of the  
30    Government Code.

1 (c) If a registered process server levies on property pursuant to  
2 subdivision (a), the registered process server shall do both of the  
3 following:

4 (1) Comply with the applicable levy, posting, and service  
5 provisions of Article 2 (commencing with Section 488.300).

6 (2) Request any third person served to give a garnishee's  
7 memorandum to the levying officer in compliance with Section  
8 488.610 on a form provided by the registered process server.

9 (d) Within five court days after levy under this section, all of  
10 the following shall be filed with the levying officer:

11 (1) The writ of attachment.

12 (2) Proof of service of the copy of the writ and notice of  
13 attachment on other persons, as required by Article 2 (commencing  
14 with Section 488.300).

15 (3) Instructions in writing, as required by the provisions of  
16 Section 488.030.

17 (e) If the fee provided by Section 26721 of the Government  
18 Code has been paid, the levying officer shall perform all other  
19 duties under the writ as if the levying officer had levied under the  
20 writ and shall return the writ to the court. If the registered process  
21 server does not comply with subdivisions (b) and (d), the levy is  
22 ineffective and the levying officer is not required to perform any  
23 duties under the writ and may issue a release for any property  
24 sought to be attached. The levying officer is not liable for actions  
25 taken in conformance with the provisions of this title in reliance  
26 on information provided to the levying officer under subdivision  
27 (d), except to the extent that the levying officer has actual  
28 knowledge that the information is incorrect. Nothing in this  
29 subdivision limits any liability the plaintiff or registered process  
30 server may have if the levying officer acts on the basis of incorrect  
31 information provided under subdivision (d).

32 (f) The fee for services of a registered process server under this  
33 section shall be allowed as a recoverable cost pursuant to Section  
34 1033.5.

35 *SEC. 2. Section 512.030 of the Code of Civil Procedure is*  
36 *amended to read:*

37 512.030. (a) Prior to the hearing required by subdivision (a)  
38 of Section 512.020, the defendant shall be served with all of the  
39 following:

40 (a)

1 (1) A copy of the summons and complaint.

2 ~~(b)~~

3 (2) A Notice of Application and Hearing.

4 ~~(e)~~

5 (3) A copy of the application and any affidavit in support  
6 thereof.

7 *(b) If the defendant has not appeared in the action and a writ,*  
8 *notice, order, or other paper is required to be personally served*  
9 *on the defendant under this title, service shall be made in the same*  
10 *manner as a summons is served under Chapter 4 (commencing*  
11 *with Section 413.10) of Title 5.*

12 ~~SEC. 2.~~

13 SEC. 3. Section 699.080 of the Code of Civil Procedure is  
14 amended to read:

15 699.080. (a) A registered process server may levy under a writ  
16 of execution on the following types of property:

17 (1) Real property, pursuant to Section 700.015.

18 (2) Growing crops, timber to be cut, or minerals or the like  
19 (including oil and gas) to be extracted or accounts receivable  
20 resulting from the sale thereof at the wellhead or minehead,  
21 pursuant to Section 700.020.

22 (3) Personal property in the custody of a levying officer,  
23 pursuant to Section 700.050.

24 (4) Personal property used as a dwelling, pursuant to subdivision  
25 (a) of Section 700.080.

26 (5) Deposit accounts, pursuant to Section 700.140.

27 (6) Property in a safe-deposit box, pursuant to Section 700.150.

28 (7) Accounts receivable or general intangibles, pursuant to  
29 Section 700.170.

30 (8) Final money judgments, pursuant to Section 700.190.

31 (9) Interest of a judgment debtor in personal property in the  
32 estate of a decedent, pursuant to Section 700.200.

33 (b) Before levying under the writ of execution, the registered  
34 process server shall deposit a copy of the writ with the levying  
35 officer and pay the fee provided by Section 26721 of the  
36 Government Code.

37 (c) If a registered process server levies on property pursuant to  
38 subdivision (a), the registered process server shall do both of the  
39 following:

1 (1) Comply with the applicable levy, posting, and service  
2 provisions of Article 4 (commencing with Section 700.010).

3 (2) Request any third person served to give a garnishee's  
4 memorandum to the levying officer in compliance with Section  
5 701.030 on a form provided by the registered process server.

6 (d) Within five court days after levy under this section, all of  
7 the following shall be filed with the levying officer:

8 (1) The writ of execution.

9 (2) Proof of service of the copy of the writ and notice of levy  
10 on other persons, as required by Article 4 (commencing with  
11 Section 700.010).

12 (3) Instructions in writing, as required by the provisions of  
13 Section 687.010.

14 (e) If the fee provided by Section 26721 of the Government  
15 Code has been paid, the levying officer shall perform all other  
16 duties under the writ as if the levying officer had levied under the  
17 writ and shall return the writ to the court. If the registered process  
18 server does not comply with subdivisions (b) and (d), the levy is  
19 ineffective and the levying officer is not required to perform any  
20 duties under the writ and may issue a release for any property  
21 sought to be levied upon.

22 (f) The fee for services of a registered process server under this  
23 section shall be allowed as a recoverable cost pursuant to Section  
24 1033.5.

25 (g) A registered process server may levy more than once under  
26 the same writ of execution, provided that the writ is still valid.

27 ~~SEC. 3.~~

28 *SEC. 4.* Section 1011 of the Code of Civil Procedure is  
29 amended to read:

30 1011. The service may be personal, by delivery to the party or  
31 attorney on whom the service is required to be made, or it may be  
32 as follows:

33 (a) If upon an attorney, service may be made at the attorney's  
34 office by leaving the notice or other papers in an envelope or  
35 package, clearly labeled to identify the attorney being served, with  
36 a receptionist or a person having charge thereof. If there is no  
37 person in the office with whom the notice or papers may be left  
38 for purposes of this subdivision at the time service is to be effected,  
39 service may be made by leaving them between the hours of 9 a.m.  
40 and 5 p.m. in a conspicuous place in the office. If the attorney's

1 office is not open so as to permit that service, then service may be  
2 made by leaving the notice or papers at the attorney's residence  
3 with a person of not less than 18 years of age, if the attorney's  
4 residence is in the same county as his or her office. If the attorney's  
5 residence is not known or is not in the same county as his or her  
6 office, or the residence is in the same county but not open, or there  
7 is no person present of at least 18 years of age, then service may  
8 be made by putting the notice or papers, enclosed in a sealed  
9 envelope, into the United States mail addressed to the attorney at  
10 his or her office, if known, and otherwise to the attorney's  
11 residence, if known. If neither the attorney's office nor residence  
12 is known, service may be made by delivering the notice or papers  
13 to the address of the attorney or party of record as designated on  
14 the court papers, or by delivering the notice or papers to the clerk  
15 of the court, or to the judge if there is no clerk, for the attorney.

16 (b) If upon a party, service shall be made in the manner  
17 specifically provided in particular cases. If no specific provision  
18 is made, service may be made by leaving the notice or other papers  
19 at the party's residence, between the hours of 7 a.m. and 9 p.m.,  
20 with a person of not less than 18 years of age. If, at the time of  
21 attempted service between those hours, a person 18 years of age  
22 or older cannot be found at the party's residence, the notice or  
23 papers may be served by mail. If the party's residence is not known,  
24 then service may be made by delivering the notice or papers to the  
25 clerk of the court or the judge, if there is no clerk, for that party.